

Santos Gomez (SBN 172741)  
Dawson Morton (SBN 320811)  
**Law Offices of Santos Gomez**  
1003 Freedom Boulevard  
Watsonville, CA 95076  
Tel. (831) 228-2560  
Fax: (831) 228-1542  
[santos@lawofficesofsantosgomez.com](mailto:santos@lawofficesofsantosgomez.com)  
[dawson@lawofficesofsantosgomez.com](mailto:dawson@lawofficesofsantosgomez.com)

Attorneys for Plaintiff Moises Gomez-Gasca

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MOISES GOMEZ-GASCA,  
individually and on behalf of other  
persons similarly situated,

**Plaintiffs,**

VS.

FUTURE AG MANAGEMENT,  
INC., ELIAS PEREZ CHAVEZ,  
CAMARILLO BERRY FARMS, L.P.,  
FUTURE HARVESTERS AND  
PACKERS, INC., and BLAZER  
WILKINSON, L.P.,

### Defendants.

Case No. 4:19-CV-2359-YGR

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: October 20, 2020

Time: 2:00 p.m.

Ctrm: Courtroom 1, U.S. District Court,  
1301 Clay St., 4th Floor, Oakland, CA

Please take notice that, on October 20, 2020, at 2:00 p.m. or as soon thereafter as counsel may be heard, in Courtroom 1 of the Oakland Courthouse, located at 1301 Clay Street, Fourth Floor, Oakland, California, Moises Gomez-Gasca (“Plaintiff”) will and hereby does move for an order granting final approval of the class action settlement

1 reached with defendant Future Ag Management, Inc., Elias Perez Chavez, Future  
2 Harvesters and Packers, Inc. (collectively the “Future Ag Defendants”), and defendant  
3 Camarillo Berry Farms LP and Blazer Wilkinson LP (collectively the “Camarillo  
4 Defendants”) that was preliminarily approved on April 21, 2020. Doc. 59. Specifically,  
5 Plaintiff moves for an order:

6       1. Certifying for settlement purposes, for treatment as a class action under  
7 Rule 23 of the Federal Rules of Civil Procedure, a settlement class defined as all  
8 individuals employed by Future Ag Management, Inc. pursuant to Job Order Number  
9 CA-15279712, under the terms of an H-2A visa, for the period of employment from  
10 May 15, 2017 through November 15, 2017.

11      2. Granting final approval of the Settlement and finding the terms of the  
12 Settlement to be fair, reasonable, and adequate under Rule 23(e) of the Federal Rules of  
13 Civil Procedure, including the amount of the settlement fund; the amount of  
14 distributions to class members; the procedure for giving notice to class members; the  
15 procedure for members of the Settlement Class to opt out of the Settlement; and the  
16 procedure for members of the Settlement Class to object to the Settlement.

17      3. Finding that class members were provided proper and adequate notice of  
18 their rights in a manner that satisfies the requirements of due process.

19      4. Directing that all class members who did not timely file a request for  
20 exclusion from the Settlement are barred from prosecuting against the Released Parties  
21 any and all released claims as set forth in the Settlement.

22      5. Directing that Defendant make a payment to the settlement administrator,  
23 in accordance with the procedures set forth in the Settlement, of the amount needed to  
24 fund all amounts payable under the Settlement.

25      6. Directing payment from the settlement fund of settlement administration  
26 fees to Atticus Administration in the amount of \$7,220 in accordance with the  
27 declaration of Chris Longley from the administrator, Atticus Administration, LLC.

28      7. Entering a final judgment dismissing the action with prejudice.

1       8. Providing that, notwithstanding entry of final judgment, the Court shall  
2 retain jurisdiction in this matter for the purposes of interpreting or enforcing the  
3 Settlement or final judgment.

4       Plaintiff's motion is made under Rule 23 of the Federal Rules of Civil Procedure  
5 on the grounds that the Settlement is fair, reasonable and adequate; in accordance with  
6 due process, class members were provided notice of their rights under the Settlement in  
7 a reasonable manner and were given a reasonable opportunity to exclude themselves  
8 from the Settlement.

9       Plaintiff's motion is based on this Notice and attached Memorandum of Points  
10 and Authorities; the Declarations of Dawson Morton, Santos Gomez, and Chris Longley  
11 submitted herewith; the prior Motion for Approval of Fees, Costs and Enhancement, and  
12 its accompanying declarations; and all other pleadings and papers on file in this action;  
13 and any oral argument or other matter that may be considered by the Court.

14

15 Dated: July 31, 2020

LAW OFFICES OF SANTOS GOMEZ

16

17       By     */s/ Dawson Morton*  
18                   Dawson Morton  
19                   Attorneys for Plaintiff

Santos Gomez (SBN 172741)  
Dawson Morton (SBN 320811)  
**Law Offices of Santos Gomez**  
1003 Freedom Boulevard  
Watsonville, CA 95076  
Tel. (831) 228-2560  
Fax: (831) 228-1542  
[santos@lawofficesofsantosgomez.com](mailto:santos@lawofficesofsantosgomez.com)  
[dawson@lawofficesofsantosgomez.com](mailto:dawson@lawofficesofsantosgomez.com)

Attorneys for Plaintiff Moises Gomez-Gasca

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MOISES GOMEZ-GASCA,  
individually and on behalf of other  
persons similarly situated,

## Plaintiffs,

FUTURE AG MANAGEMENT, INC.,  
ELIAS PEREZ CHAVEZ,  
CAMARILLO BERRY FARMS, L.P.,  
FUTURE HARVESTERS AND  
PACKERS, INC., and BLAZER  
WILKINSON, L.P.,

### Defendants.

Case No. 4:19-CV-2359-YGR

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR AN  
ORDER GRANTING FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: October 20, 2020

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## INTRODUCTION

On April 21, 2020, the Court granted Plaintiff’s motion for preliminary approval of the parties’ class action settlement. Doc. 59. The April 21, 2020 Order also conditionally certified the class pursuant to Fed. R. Civ. P. 23(c). Doc. 59 at 2. Pursuant to that Order, Plaintiff’s Motion for Approval of Attorneys’ Fees, Costs and Enhancement Award was filed on July 21, 2020. Doc. 62 (“Fee Motion”). The parties stipulated to an extension of time for the final approval motion, Doc. 61, and the Court extended the final approval deadline to July 31, 2020, Doc. 63. The deadline to object to the Settlement and/or to Plaintiff’s Fee Motion remains September 22, 2020. Doc. 59 at 5.

Plaintiff now moves for final certification of the settlement class and final approval of the Settlement. For the reasons set forth below, the Settlement is fair, adequate and reasonable, Plaintiff should be awarded the full amounts of attorney's fees, costs and enhancement award requested, and final approval should be granted.

## SUMMARY OF SETTLEMENT TERMS

The settlement provides:

- A Settlement Class of all individuals employed by Future Ag Management Inc. pursuant to Job Order Number CA-15279712, under the terms of an H-2A visa, for the period of employment from May 15, 2017 through November 15, 2017 (the “Class Period”). The total number of Settlement Class Members is eighty-eight (88) employees. Christopher Longley Decl. at ¶ 4 (attached).
  - Defendants will pay the Gross Settlement Amount of \$355,000 on a non-reversionary basis. Doc. 59 at 13. Class members are not required to submit claims to receive settlement benefits. Longley Decl. at ¶ 10.
    - The Camarillo Defendants shall pay a gross settlement amount of one hundred and seventy-five thousand dollars (\$175,000.00), inclusive of payments to Named Plaintiff, the Class fees, litigation costs, third party administration, and expenses (hereinafter “Camarillo Fund”). Doc. 59 at

14. The Camarillo Defendants shall pay the Camarillo Fund within twenty (20) days of Final Approval. *Id.*

- The Future Ag Defendants shall pay a gross settlement amount of one hundred and eighty thousand dollars (\$180,000.00), inclusive of payments to Named Plaintiff, the Class fees, litigation costs, third party administration, and expenses (hereinafter “Future Ag Fund”). Doc. 59 at 14. The Future Ag Defendants shall pay ninety thousand dollars (\$90,000.00) of the Future Ag Fund due within twenty (20) days of Final Approval and the remaining ninety thousand dollars (\$90,000.00) of the Future Ag Fund due on or before December 1, 2020. *Id.*

The Settlement provides an application by Plaintiff for an award of attorney’s fees up to \$106,500 (30% of the Gross Settlement Amount), and an award of litigation costs up to \$15,000, and an enhancement award to Plaintiff of \$10,000. Doc. 59 at 15.

## ARGUMENT

## I. THE SETTLEMENT MERITS FINAL APPROVAL

A class may be settled “only with the court’s approval,” Fed. R. Civ. P. 23(e), but that review is done with “strong judicial policy that favors settlements[.]” *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Tijero v. Aaron Bros.*, 301 F.R.D. 314, 320 (N.D. Cal. December 19, 2013).

This Circuit, and the federal rules, require an assessment that the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (requiring “a determination that the settlement taken as a whole is fair, reasonable, and adequate.”). In making that assessment, courts in the Ninth Circuit “typically consider[] the following factors[:]” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015).

1) the strength of the plaintiff's case; 2) the risk, expense, complexity, and likely duration of further litigation; 3) the risk of maintaining class action status

1 throughout the trial; 4) the consideration offered in settlement; 5) the extent of  
2 discovery completed, and the stage of the proceedings; 6) the experience and  
3 views of counsel; and 7) the reaction of the class to the proposed settlement.

4 *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004); *Littlejohn v. Copland*,  
5 2020 U.S. App. LEXIS 20531, at \*4 (9th Cir. June 30, 2020) (affirming use of factors in  
6 assessing fairness as “appl[ying] the correct legal framework . . . in approving the  
7 Settlement.”).<sup>1</sup>

8 The federal rules, amended in 2018, also now require that:

9 (a) the class was adequately represented by counsel and the class  
10 representatives, (b) the negotiation was at arm’s length, and (c) the relief  
11 requested is adequate considering (i) costs, risks and delay, (ii)  
effectiveness of distribution, (iii) terms of fee award, and (d) the class  
members are treated equitably among each other.

12 Fed. R. Civ. P. 23(e)(2); *Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 n.11 (9th  
13 Cir. 2019) (noting in 23(e)(2) “Congress codified its own multifactor test”). “This list of  
14 factors is not intended to displace any factors currently considered by courts[.]” *Camilo*  
15 *v. Ozuna*, 2020 U.S. Dist. LEXIS 57435, at \*13 (N.D. Cal. Apr. 1, 2020).

16 Finally, the Ninth Circuit has also cautioned that courts must be wary of “explicit  
17 collusion” or “indicia of possible collusion[.]” *In re Bluetooth Headset Prods. Liab.*  
18 *Litig.*, 654 F.3d at 947. And, asks that courts “employ[] extra caution and more rigorous  
19 scrutiny—when it comes to settlements negotiated prior to class certification[.]” *Roes v.*  
20 *SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019). Deciding whether a  
21 settlement is fair is ultimately “an amalgam of delicate balancing, gross approximations  
22 and rough justice[.]” *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods.*  
23 *Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018) (citations omitted). Here, the factors  
24 allow the ready conclusion that the Settlement is fair and reasonable.  
25

26  
27  
28 <sup>1</sup> An additional factor “the presence of a government participant” is inapplicable here.

1           **A. The Strength of Plaintiff's Case**

2           Assessing the strength of a plaintiff's case involves weighing the merits against  
3           the settlement amount and potential recovery. *Van Bronkhorst v. Safeco Corp.*, , 529  
4           F.2d 943, 950 (9<sup>th</sup> Cir. 1976). *See also, Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal.  
5           2010) 266 F.R.D. 482, 488. A district court need not, however, "reach any ultimate  
6           conclusions on the contested issues of fact and law which underlie the merits of the  
7           dispute, for it is the very uncertainty of outcome in the litigation and avoidance of  
8           wasteful and expensive litigation that induce consensual settlements." *Class Plaintiffs v.*  
9           *Seattle*, 955 F.2d 1268, 1291 (9<sup>th</sup> Cir. 1992).

10          Here, Plaintiff maintains his principal claims that Defendant failed to pay all  
11          lawful wages owed and failed to indemnify class members for work related expenses are  
12          very strong and Plaintiff achieved a result commensurate with the relative strength of  
13          those claims. According to the calculations initially prepared by the Administrator,<sup>2</sup> the  
14          highest estimated award amount to be paid to a Class Member is \$3,225.08; the lowest  
15          payment amount is \$387.11; and the average payment amount per Class Member is  
16          \$2,426.14. Longley Decl., ¶ 12.

17          At the initial approval hearing and in their moving papers, Plaintiff's counsel  
18          represented that no amount would be less than a full FLSA recovery. Doc. 56 at 19. The  
19          full FLSA recovery amount is \$868.29. *Id.* When these amounts are adjusted to ensure  
20          each Class Member receives at least \$868.29, four individual class members' awards are  
21          raised, and the average increases to \$2,440.68. Longley Decl. ¶ 11(c). That adjustment  
22          requires \$1,253.50 in additional funds which Plaintiff proposes can be apportioned from  
23          unspent costs.

24          Plaintiff is estimated to receive an Individual Settlement Allocation of \$3,096.07  
25          in addition to any enhancement award the Court may approve. Longley Decl. at ¶ 12.

27          

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28          <sup>2</sup> Using a 100% participation rate, each Class member's Individual Settlement Allocation was determined by using a pro-rata share of the Net Settlement Amount based on his or her eligible workweeks during the Class Period in Job Order Number CA-15279712. Longley Decl., ¶ 11(b).

1 The distribution amount for all class members is expect to rise as costs of settlement  
2 administration and Plaintiff's costs are both below the amounts used to prepare the  
3 distribution amounts. Longley Decl. ¶ 11(a); *see also, infra*, at section III.

4 Given the fact that each of the 88 Class Members worked *no more than six*  
5 *months*, an average recovery of more than \$2,400 (equivalent to an additional week per  
6 month worked) reflects an excellent result that warrants final approval.

7 **B. The Risk, Expense, Complexity and Likely Duration of Further  
8 Litigation**

9 Continued litigation of this case would have exposed Plaintiff to substantial  
10 expense and risk. In the absence of settlement, Plaintiff ran the risk of losing a contested  
11 motion for class certification or of the packing defendants attempting to escape or limit  
12 liability. In that event, Plaintiff would not have achieved anything for Class Members or  
13 obtained a result with a limited ability to collect. Thus, there were possible litigation  
14 outcomes where class members, assuming they prevailed on a contested motion for  
15 class certification, would have recovered far less than what was achieved by the  
16 Settlement. Plaintiff also faced the prospect of lengthy and expensive discovery with  
17 respect to the merits of his claims. Among other issues, continued litigation would likely  
18 have involved expensive and lengthy disputes regarding Plaintiff's discovery of  
19 personnel records, and/or other employment records. The prospect of "lengthy and  
20 expensive litigation with uncertain results" supports settlement. *See, Nat'l Rural*  
21 *Telecommons. Coop. v. DirectTV, Inc.* 221 F.R.D. 523, 526 (C.D. Cal. 2004).

22 **C. The Risk of Maintaining Class Action Status**

23 While Defendant has not objected to class certification for the purposes of  
24 settlement, Defendant would have opposed certification. Moreover, even if Plaintiff  
25 prevailed on an initial motion for class certification as Plaintiff expected, Plaintiff still  
26 faced the risk of a motion by Defendant for decertification and the Camarillo  
27 Defendants might have sought to evade liability whereas here they are paying nearly  
28 half of the Settlement Amount. Finally, even if Plaintiff succeeded in certifying all class

1 claims, prevailing on the merits at trial or obtaining a result better than the one  
2 presented by this negotiated resolution was less than certain.

3 **D. The Amount Offered in Settlement**

4 “The amount offered in the proposed settlement agreement is generally  
5 considered to be the most important consideration of any class settlement.” *Moreno v.*  
6 *Beacon Roofing Supply, Inc.*, 2020 U.S. Dist. LEXIS 122642, \*10-11 (S.D. Cal. July 13,  
7 2020). As discussed above and in the revised motion for preliminary approval, Doc. 56,  
8 the Settlement achieved by Plaintiff reflects an excellent result, Doc. 56 at 22. The  
9 settlement provides between 58.7 and 93% of the lost wages at issue and even when  
10 penalties are included in the calculation, the recovery is from 40.8% to 54.9% of a full  
11 damage recovery. Doc. 56 at 22-23; Morton Decl. [Doc. 56-1] at ¶ 8. This amount  
12 significantly exceeds recoveries that have received court approval. *See, e.g., Uschold v.*  
13 *NSMG Shared Servs., LLC*, 2020 U.S. Dist. LEXIS 99258, at \*29 (N.D. Cal. June 5,  
14 2020) (approving settlement where “the Net Settlement Amount reflects a 12% recovery  
15 of the high-end estimate of potential damages.”); *Camilo*, 2020 U.S. Dist. LEXIS  
16 57435, at \*17 (approving settlement where the “Net Settlement Fund is a little less than  
17 half (i.e., 44%) of defendants’ potential liability”); *Bellinghausen*, 306 F.R.D. at 256  
18 (approving settlement in a wage and hour class action where the gross common fund  
19 amount represented between 11% and 27% of plaintiffs’ potential recovery). Pursuant to  
20 the Settlement, Defendants will effectively pay class members an additional week of  
21 compensation for each month worked. Doc. 56-1 at ¶ 9. Plaintiff’s counsel reasonably  
22 concluded that a settlement providing class members such a recovery was in Class  
23 Members’ best interests.

24 **E. The Extent of Discovery Completed and The Stage of The Proceedings**

25 The parties reached a Settlement in good faith after engaging in sufficient formal  
26 and informal discovery, and then negotiating at arm’s length during a day-long  
27 mediation conducted by a retired Judge, who is an experienced and well-respected  
28 mediator with extensive wage and hour class action experience. Doc. 56-1 (Morton

1 Decl.) at ¶ 5. Although the parties agreed to mediate before completing all possible  
2 formal discovery, in negotiating a class resolution, “formal discovery is not a necessary  
3 ticket to the bargaining table.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239  
4 (9th Cir. 1998). The focus is whether the parties had sufficient information to evaluate  
5 the strength and weakness of their case. *In re Immune Response Securities Litigation*,  
6 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007). Here, there is no dispute that the parties’  
7 settlement negotiations were conducted at arm’s length, in good faith, after sufficient  
8 formal and informal discovery enabled the parties to intelligently assess the strengths or  
9 weaknesses of their case.

10 **F. The Experience and Views of Counsel**

11 The opinions of experienced class counsel are “a factor supporting the court’s  
12 final approval of the agreement” and are entitled to “considerable weight.” *Ontiveros v.*  
13 *Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014); *Chen v. Chase Bank USA, N.A.*, 2020  
14 U.S. Dist. LEXIS 110755, at \*20 (N.D. Cal. June 23, 2020) (noting counsel’s “extensive  
15 experience in this field, and their assertion that the settlement is fair, adequate, and  
16 reasonable, [] supports final approval of the Settlement Agreement.”); *Uschold*, 2020  
17 U.S. Dist. LEXIS 99258, at \*32 (same). Here, Plaintiff’s attorneys have substantial  
18 experience litigating class actions in general and wage and hour class actions in  
19 particular. Doc. 56-1 at ¶ 2; and Gomez Decl. at ¶¶ 2-5. Their opinion that the  
20 Settlement is fair and reasonable, and that final approval of the Settlement would best  
21 serve the interests of class members, weighs in favor of final approval.

22 **G. Notice of the Settlement and Class Members Response Thereto**

23 The overwhelmingly positive reaction from the class also supports final approval.  
24 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (noting district court  
25 “ha[s] discretion to find a favorable reaction to the settlement” where few opted out);  
26 *Bellinghausen*, 306 F.R.D. at 258 (“Courts have repeatedly recognized that the absence  
27 of a large number of objections to a proposed class action settlement raises a strong  
28 presumption that the terms of the proposed class settlement actions are favorable to the

1 class members.”) Accordingly, courts generally conclude that where “none of the Class  
2 Members who received the Class Notice objected to the Settlement … [this factor]  
3 weighs in favor of final approval.” *Contreras v. Worldwide Flight Servs.*, 2020 U.S.  
4 Dist. LEXIS 79037, at \*14 (C.D. Cal. Apr. 1, 2020); *see also Nat'l Rural Telecomms.*  
5 *Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“the absence of a  
6 large number of objections to a proposed class action settlement raises a strong  
7 presumption that the terms of a proposed class action settlement are favorable to the  
8 class members.”); *Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667, at  
9 \*33 (N.D. Cal. Apr. 1, 2011) (same).

10 The federal rules require “the best notice that is practicable under the  
11 circumstances[.]” Fed. R. Civ. P. 23(c)(2)(B); *Roes v. SFBSC Mgmt., LLC*, 944 F.3d  
12 1035, 1044 (9th Cir. 2019) (requiring “best notice practicable”).<sup>3</sup> Here, notice was  
13 distributed by mail and electronically, where possible, to Class Members, even though  
14 Defendants produced no electronic addresses. Longley Decl. at ¶ 4 and ¶ 6, the mailed  
15 notice, with a website, Longley Decl. at ¶ 7, and supplemental electronic notice,  
16 Longley Decl. at ¶ 8, was “the best notice practicable, which satisfied the requirements  
17 of law and due process.” *Ortiz v. Genco, Inc.*, 2019 U.S. Dist. LEXIS 70625, \*3 (N.D.  
18 Cal. April 23, 2019).

19 On May 22, 2020, the Notice was mailed to all 88 Class Members. Longley Decl.  
20 ¶¶ 4-5. As of July 30, 2020, no notices have been returned as undeliverable. *Id.* In  
21 addition, on May 27, 2020, Atticus sent a message in Spanish via WhatsApp to 17 Class  
22 Members for whom WhatsApp numbers were received from counsel. *Id.* at ¶ 6. Six of  
23 the messages were successfully delivered. *Id.* Atticus had an additional 44 interactions  
24 with class members, including phone calls, and 18 WhatsApp communications.

25

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26       <sup>3</sup> The Ninth Circuit in *SFBSC Management* expected that additional notice beyond mail would  
27 be used where employees might be difficult to reach by mail. “We find it particularly problematic that,  
28 despite concerns that former employees in particular might be difficult to reach by mail, the settlement  
provided no other means of reaching former employees.” *Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035,  
1046 (9th Cir. 2019).

1 Longley Decl. ¶ 8. Lastly, on May 22, 2020, Atticus launched the settlement website  
2 www.litigiofuturo.com. *Id.* at ¶ 7. The website has remained continuously operational  
3 since that date and continues to be accessible as of the date of this filing. *Id.* The URL  
4 was printed in the mailed Notice and referenced in the WhatsApp message. *Id.* The  
5 website includes, among other things, copies of the Notice in Spanish and English, as  
6 well as settlement documents filed with the Court, answers to frequently asked  
7 questions about the settlement, key settlement dates, and options on how to contact  
8 Atticus and Class Counsel. *Id.* Additionally, class counsel has fielded telephone calls,  
9 emails and messages from at least 19 class members. Third Morton Decl. at ¶ 4.

10 Class Members have until September 22, 2020 to request exclusion from the  
11 Settlement or object to the Settlement terms. Doc. 59 at 5. Information on how to  
12 exclude and object are included in the Notice and on the Settlement website. Longley  
13 Decl. at ¶ 9. As of the date of this submission, Atticus has not received any exclusion  
14 requests or settlement objections, nor have any Class Members contacted Atticus  
15 indicating any interest in opting out or objecting to the Settlement. Longley Decl. at ¶¶  
16 8- 9. Should any exclusion requests or objections be filed, the Administrator, Atticus,  
17 will update the parties and the Court after the September 22, 2020 deadline has passed.  
18 Longley Decl. at ¶ 9.

19 **H. There Are No Indicia of Collusion**

20 Courts consider three factors to assess whether collusion is at issue: (1) counsel  
21 receiving a disproportionate share of the settlement; (2) a 'clear sailing' arrangement;  
22 and (3) a reverter that returns unclaimed amounts to the defendant. *SFBSC Mgmt., LLC*,  
23 944 F.3d at 1049. A district court must address indicators of collusion. *SFBSC Mgmt.,*  
24 *LLC*, 944 F.3d at 1049-50. The settlement does not contain either a reverter of funds to  
25 Defendants, nor a settlement amount grossly disproportionate to the amount of fees. *In*  
26 *re Bluetooth* , 654 F.3d at 947. Further the fees requested are well supported and  
27 reasonable. Doc. 62 at 6.

1       **II. THE AMOUNTS OF FEES, COSTS AND ENHANCEMENT ARE**  
2       **REASONABLE**

3           In connection with his previously filed Fee Motion, Plaintiff has explained why  
4       the requested amounts of attorneys' fees (\$106,000), costs (\$8,622.41) and enhancement  
5       award (\$10,000) are reasonable. Doc. 62. The fees are in line with those prevailing in  
6       the Bay Area legal market and the hours expended were reasonably necessary. Doc. 62  
7       at 6-7. The costs are reasonable and of the type commonly awarded. Doc. 62 at 8; *see*  
8       *also* Doc. 62-4.

9           The enhancement award of \$10,000 is a reasonable incentive award and amounts  
10      to approximately four times the average class recovery. Langley Decl. at ¶11(c). These  
11      awards are intended "to compensate class representatives for work done on behalf of the  
12      class, to make up for financial or reputational risk undertaken in bringing the action[.]"  
13      *Rodriguez*, 563 F.3d at 958-59; *SFBSC Mgmt., LLC*, 944 F.3d at 1057. The \$10,000  
14      incentive award is just over four times the average class recovery of just over \$2,440,  
15      Longley Decl. at ¶¶ 11-12, and compensates for significant time and reputational risks,  
16      Gomez-Gasca Decl. [Doc. 62-7] at ¶¶ 4-11. A four times recovery is inline with other  
17      decisions in this district. *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS  
18      163991, at \*40 (N.D. Cal. Oct. 3, 2017) (approving "a \$10,000 service award for  
19      Plaintiff" in employment litigation); *Black v. T-Mobile USA, Inc.*, 2019 U.S. Dist.  
20      LEXIS 123676, at \*21 (approving "a \$10,000 service award" which was  
21      "approximately 3.2 times" average recovery); *McDonald v. CP OpCo, LLC*, 2019 U.S.  
22      Dist. LEXIS 80501, at \*23-24 (N.D. Cal. May 13, 2019) (rejecting a service award of  
23      "7.5 times the recovery of an average class member" and awarding one of \$10,000 or 5  
24      times the average class recovery).

25           With regard to administration of the Settlement, Atticus final charge for  
26       administering the settlement is \$7,220. Longley Decl. at ¶ 14. This represents a savings  
27       of \$2,780 from the amount initially reserved, \$10,000, for administration. Doc. 56 at  
28

1           **III. THE CY PRES DESIGNATION IS APPROPRIATE.**

2           The Court has broad discretionary powers in selecting a cy pres recipient. *Six (6)*  
3           *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990). But  
4           there must be “a driving nexus between the plaintiff class and the cy pres  
5           beneficiaries[.]” *Nachshin v. AOL, Ltd. Liab. Co.*, 663 F.3d 1034, 1038 (9th Cir. 2011).  
6           Here, the proposed *cy pres* award recipient, Food Bank of Monterey County, is related  
7           to the Plaintiff class’ agricultural employment issues in Monterey County. *See*  
8           Settlement Agreement at ¶ 3.6 [Doc. 59 at 14].

9           **IV. ADJUSTMENT TO PAY FULL FLSA DAMAGES**

10          Four class members worked six weeks or less. Longley Decl. at ¶ 11(c). Their  
11          distribution amounts on a workweek basis are between \$387.11 and \$774.02. Plaintiff  
12          proposes to raise those amounts to ensure they receive at least a minimum award of  
13          \$868.29 which would provide full FLSA unpaid wages for their travel expenses and  
14          liquidated damages. The cost to raise the payments to the four class members so each  
15          received \$868.24 is a total of \$1,253.50. Because the Administrator had already  
16          apportioned all class funds in the notice process and begun printing notices before  
17          Plaintiff’s counsel raised this issue, the \$1,253.50 must come from other funds. Plaintiff  
18          proposes that a portion of the savings from a lower cost request by Plaintiff’s counsel be  
19          used to raise the payment to these four class members while the remaining savings be  
20          apportioned to raise all class members payments on a pro rata basis based on the number  
21          of work weeks each worked.

22           **V. FINAL CERTIFICATION OF THE CLASS**

23          The Court has preliminarily certified this case for settlement purposes. Doc. 59 at  
24          1-2. The class to be finally certified consists of:

25          all individuals employed by Future Ag Management Inc. pursuant to Job Order  
26          Number CA-15279712, under the terms of an H-2A visa, for the period of  
employment from May 15, 2017 through November 15, 2017 (“the Class”)

27          Doc. 59 at 1. The final class list consists of 88 temporary foreign laborers. Longley  
28          Decl. at ¶ 4. The class is numerous, shares common questions of law and facts

including that they were all employed under the same written contract using the same job title and subject to the same legal violations, Morton Decl. [Doc. 56-1] at ¶ 4, Plaintiff is a member of the class and has fairly and adequately represented the interests of the class, Gomez-Gasca [Doc. 62-7] Decl. at ¶ 3. The class shares common legal and factual questions including the issue of FLSA violations for travel and proper compensation for each hour worked. Third Morton Decl. at ¶ 5. Accordingly, the Court should issue final class certification.

## CONCLUSION

Plaintiff respectfully requests the Court grant final approval of the Settlement and award Plaintiff the full amount of costs, fees and enhancement award requested in Plaintiff's Fee Motion.

Dated: July 31, 2020

## LAW OFFICES OF SANTOS GOMEZ

By /s/ Dawson Morton  
Dawson Morton  
Attorneys for Plaintiff

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7 CERTIFICATE OF SERVICE  
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9

10 I HEREBY CERTIFY that this 31st day of July 2020 I have filed the  
11 foregoing MOTION FOR FINAL APPROVAL using the Court's CM/ECF system.  
12 The Court will electronically notice the following through the CM/ECF system:  
13  
14  
15  
16

17 Jennifer M. Schermerhorn  
18 Rebecca A. Hause-Schultz  
19 THE SAQUI LAW GROUP  
20 1410 Rocky Ridge Drive, Suite 330  
21 Roseville, California 95661  
22 Email: [JSchermerhorn@laborcounselors.com](mailto:JSchermerhorn@laborcounselors.com)  
23 [Rhause-schultz@laborcounselors.com](mailto:Rhause-schultz@laborcounselors.com)

24 Counsel for Camarillo Berry Farms, L.P. and Blazer Wilkinson, L.P.

25 Ana Toledo  
26 NOLAND, HAMERLY, ETIENNE & HOSS  
27 A Professional Corporation  
28 333 Salinas Street  
P.O. Box 2510  
Salinas, CA 93902  
[atoledo@nheh.com](mailto:atoledo@nheh.com)  
[canossett@nheh.com](mailto:canossett@nheh.com)

29 Counsel for Future Ag Management, Inc., Future Harvesters and Packers, Inc., and Elias  
30 Perez-Chavez

31  
32  
33  
34  
35  
36  
37  
38 s/ D. Morton  
39 Dawson Morton